



STATE OF INDIANA

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February 3, 2009

Mark Reder
Indiana Gaming Commission
East Tower, Suite 1600
101 West Washington Street
Indianapolis, Indiana 46204

Re: Your informal inquiry

Dear Mr. Reder:

This is in response to your informal inquiry dated December 22, 2008. Pursuant to Ind. Code § 5-14-4-10(5), I issue the following opinion in response to your inquiry.

You write on behalf of the Indiana Gaming Commission ("Commission"). Pursuant to the Access to Public Records Act ("APRA") (Ind. Code 5-14-3), the Commission is a public agency. I.C. § 5-14-3-2. Your inquiry is whether I.C. § 4-1-10-4 can be read independently of I.C. § 4-1-10-5.

Ind. Code § 5-14-3-3(a) provides that any person may inspect and copy the public records of any public agency during the regular business hours of the agency, except as provided in section 4 of APRA. I.C. § 5-14-3-4(a)(1) provides that an agency may not disclose, except pursuant to statute or court order requiring disclosure, any record declared confidential by state statute.

Ind. Code 4-1-10 addresses the release of social security numbers, which are generally excepted from disclosure pursuant to I.C. § 5-14-3-4(a)(12). I.C. § 4-1-10-3 provides, in part, the following:

(b) Except as provided in section 4 or 5 of this chapter, a state agency may not disclose an individual's Social Security number.

You inquire whether sections 4 and 5 can be read independently of one another. Section 4 provides the following:

Unless prohibited by state law, federal law, or court order, the following apply:

(1) A state agency may disclose the Social Security number of an individual to a state, local, or federal agency.

(2) A state law enforcement agency may, for purposes of furthering an investigation, disclose the Social Security number of an individual to any individual, state, local, or federal agency, or other legal entity.

I.C. § 4-1-10-4

I.C. § 4-1-10-5 provides the following:

(a) A state agency may disclose the Social Security number of an individual if any of the following apply:

(1) The disclosure of the Social Security number is expressly required by state law, federal law, or a court order.

(2) The individual expressly consents in writing to the disclosure of the individual's Social Security number.

(3) The disclosure of the Social Security number is:

(A) made to comply with:

(i) the USA Patriot Act of 2001 (P.L. 107-56); or

(ii) Presidential Executive Order 13224; or

(B) to a commercial entity for the permissible uses set forth in the:

(i) Drivers Privacy Protection Act (18 U.S.C. 2721 et seq.);

(ii) Fair Credit Reporting Act (15 U.S.C. 1681 et seq.); or

(iii) Financial Modernization Act of 1999 (15 U.S.C. 6801 et seq.).

(4) The disclosure of the Social Security number is for the purpose of administration of a state agency employee's or the state agency employee's dependent's health benefits.

(5) The disclosure of the Social Security number is for the purpose of administration of:

(A) a pension fund administered by the board of trustees of the public employees' retirement fund;

(B) the Indiana state teachers' retirement fund;

(C) a deferred compensation plan or defined contribution plan established under IC 5-10-1.1;

(D) a pension plan established by the state police department under IC 10-12; or

(E) the Uniform Commercial Code (IC 26-1) by the office of the secretary of state.

(b) A state agency's disclosure of the Social Security number of an individual in compliance with subsection (a) does not violate IC 5-14-3-4(a)(12).

The title for Section 4 is "Exceptions to nondisclosure of Social Security number." The title for Section 5 is "Permitted disclosures of Social Security number." It is clear that by I.C. § 5-14-3-4(a)(12) and I.C. § 4-1-10-3, the General Assembly

expressed its intent to limit the disclosure of social security numbers by state agencies. But the legislature has provided limited specific instances when a social security number may be disclosed. In Section 4, the legislature provided exceptions to nondisclosure. In my opinion, those exceptions are specific exceptions to I.C. § 5-14-3-4(a)(12) and I.C. § 4-1-10-3. In other words, the restriction on releasing a social security numbers does not apply in the limited instances identified in I.C. § 4-1-10-4. Those exceptions come without other instruction, and as such it is my opinion no further action must be taken, like obtaining consent from the affected individual.

In Section 5, the legislature provided that, notwithstanding the restriction on releasing a social security number, an agency may be permitted to release confidential social security numbers when certain conditions are met. One of those conditions is consent from the affected individual. *See* I.C. § 4-1-10-5(a)(2). This provision would be applicable to the release of any social security number contained in the records of any state agency. If the individual consents in writing to the release, the agency may release the number to anyone the individual allows. It is my opinion that the language in Section 4 could have been placed in Section 5 if the legislature intended for a state agency to obtain consent for disclosure. In the alternative, language similar to that in I.C. § 4-1-10-5(a)(2) could have been used in Section 4 but was not. In my opinion, the two statutes should be read independently of one another.

Please do not hesitate to contact me if I can provide any further assistance.

Best regards,



Heather Willis Neal
Public Access Counselor